



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2021-0426; FRL-8710-03-R9]

Designation of Areas for Air Quality Planning Purposes; California; Eastern Kern, Sacramento Metro, and Western Nevada 2015 Ozone Nonattainment Areas; Reclassification to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to grant requests by the California Air Resources Board (CARB) to reclassify three nonattainment areas in California from “Moderate” to “Serious” for the 2015 ozone national ambient air quality standards (NAAQS). These three areas are herein referred to as the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas. In connection with the reclassification, the EPA is proposing to establish deadlines for submittal of revisions to the Eastern Kern, Sacramento Metro, and Western Nevada portions of the California state implementation plan (SIP) to meet additional requirements for Serious ozone nonattainment areas.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0426 at <https://www.regulations.gov>. For comments submitted at Regulations.gov,

follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Leers, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4279, Leers.Ben@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we”, “us,” and “our” refer to the EPA.

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I. Background

The CAA requires the EPA to establish primary and secondary NAAQS for certain pervasive pollutants that “may reasonably be anticipated to endanger public health and welfare.” The primary NAAQS is designed to protect public health with an adequate margin of safety, and the secondary NAAQS is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants, including ozone. The NAAQS represent the air quality levels an area must meet to comply with the CAA. Ozone is a gas composed of three oxygen atoms and is created by chemical reactions between volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the atmosphere in the presence of sunlight. Ground-level ozone can harm human health and the environment. Ozone exposure has been associated with increases in susceptibility to respiratory infections, medication use by asthmatics, doctor visits, and emergency department visits and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to premature death, especially in people with heart and lung disease.

In October 2015, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm (“2015 ozone

NAAQS”).¹ In accordance with section 107(d) of the CAA, the EPA must designate an area “nonattainment” if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as “Marginal,” “Moderate,” “Serious,” “Severe,” or “Extreme,” depending upon the ozone design value for an area.² As a general matter, higher classified ozone nonattainment areas are subject to a greater number of, and more stringent, CAA planning requirements than lower classified areas but are allowed more time to demonstrate attainment of the ozone NAAQS.³

Effective August 3, 2018, the EPA designated and classified the Eastern Kern,⁴ Sacramento Metro,⁵ and Western Nevada⁶ areas under the CAA as Moderate nonattainment for the 2015 ozone NAAQS.⁷ The EPA’s classification of these areas as Moderate ozone nonattainment established a requirement that each area attain the 2015

¹ 80 FR 65291 (October 26, 2015).

² See CAA section 181(a)(1). For the 2015 ozone NAAQS, the design value at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three years. The design value for an area is the highest design value among the monitoring sites in the area.

³ See, generally, subpart 2 of part D of title I of the CAA.

⁴ Kern County is located in the southernmost portion of California’s Central Valley. The Eastern Kern ozone nonattainment area, which lies within the Mojave Desert air basin, covers the eastern portion of Kern County, excluding Indian Wells Valley. The western portion of Kern County lies within the San Joaquin Valley air basin and is included within the San Joaquin Valley ozone nonattainment area. For more detail on the boundaries of the Eastern Kern ozone nonattainment area, see the entry for “Kern County (Eastern Kern), CA” in the 2015 ozone table in 40 CFR 81.305.

⁵ The Sacramento Metro nonattainment area includes Sacramento and Yolo Counties, the eastern portion of Solano County, the western portions of Placer and El Dorado counties outside of the Lake Tahoe Basin, and the southern portion of Sutter County. For more detail on the boundaries of the Sacramento Metro ozone nonattainment area, see the entry for “Sacramento Metro, CA” in the 2015 ozone table in 40 CFR 81.305.

⁶ Nevada County is located in the north-central Sierra Nevada Range and includes portions of Tahoe National Forest. The easternmost portion of Nevada County is excluded from the Western Nevada ozone nonattainment area and is designated unclassified or attainment for the 2015 ozone NAAQS. For more detail on the boundaries of the Western Nevada ozone nonattainment area, see the entry for “Nevada County (Western part), CA” in the 2015 ozone table in 40 CFR 81.305.

⁷ 83 FR 25776 (June 4, 2018).

ozone NAAQS as expeditiously as practicable, but no later than six years from the date of designation as nonattainment, i.e., August 3, 2024.⁸

In August 2020, CARB submitted to the EPA a request from the air districts in the Sacramento Metro area⁹ to voluntarily reclassify the Sacramento Metro ozone nonattainment area from Moderate to Serious nonattainment for the 2015 ozone NAAQS.¹⁰ In May 2021, CARB submitted to the EPA requests from the Eastern Kern Air Pollution Control District and the Northern Sierra Air Quality Management District to voluntarily reclassify the Eastern Kern and Western Nevada ozone nonattainment areas, respectively, from Moderate to Serious nonattainment for the 2015 ozone NAAQS.¹¹ In this document, we refer to the air districts in the Sacramento Metro, Eastern Kern, and Western Nevada nonattainment areas collectively as the “districts.” Under the EPA’s ozone implementation rules at 40 CFR 51.1303(b), the EPA must approve a state’s request, for any reason, for a higher classification for an ozone nonattainment area, in accordance with CAA section 181(b)(3).¹² We find that the plain language of CAA section 181(b)(3) and 40 CFR 51.1303(b) mandates that we approve these voluntary reclassification requests, and thus, the EPA proposes in this action to

⁸ See 40 CFR 51.1303(a).

⁹ The Sacramento Metro area is regulated by five local air districts: the Sacramento Metropolitan Air Quality Management District (AQMD), the Feather River AQMD, the El Dorado County AQMD, the Yolo-Solano AQMD, and the Placer County Air Pollution Control District.

¹⁰ Letter dated August 3, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX, requesting voluntary reclassification of Sacramento Metro to Serious nonattainment for the 2015 ozone NAAQS.

¹¹ Letters, dated April 30, 2021 and May 15, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX, requesting voluntary reclassification of Western Nevada and Eastern Kern to Serious nonattainment for the 2015 ozone NAAQS, respectively.

¹² CAA section 181(b)(3) provides that the EPA shall grant the request of any state to reclassify an ozone nonattainment area to a higher classification.

grant CARB's request to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS.

II. Serious Area Requirements and Proposed Schedule

In this action, we are proposing to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. We are also proposing to establish a schedule for the State to submit SIP revisions to address the planning requirements made applicable to each area as a result of its higher classification, including both the general air quality planning requirements under CAA section 172(c) and the specific requirements for Serious areas under CAA section 182(c), as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS ("2015 Ozone SRR").¹³ Deadlines for the submittal of specific planning elements are described in Section II of this notice. Upon the effective date of a final action granting the reclassification, the areas would be required to attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than nine years from the effective date of designation as nonattainment, i.e., no later than August 3, 2027.

A. Serious Area Plan Requirements in General

The 2015 Ozone SRR requires states to submit a SIP revision including a Serious area attainment demonstration, reasonable further progress demonstration, reasonably available control measures, and contingency measures for the 2015 ozone NAAQS no later than four years from the area's date of designation as nonattainment.¹⁴ Additionally, for the Sacramento area, California would be required to certify that its current motor

¹³ The EPA promulgated the 2015 Ozone SRR at 40 CFR part 51, subpart CC.

¹⁴ See CAA section 182(c) and 83 FR 62988. We encourage CARB and the districts to work with EPA Region IX staff to confirm the specific planning requirements applicable to each area.

vehicle inspection and maintenance (I/M) program meets the requirements for an enhanced I/M program as required by the CAA and the EPA's I/M regulations.¹⁵ CARB would also need to either submit a SIP revision that addresses the CAA's requirements for a clean fuel vehicle program or certify that its currently approved substitute measure continues to meet CAA requirements.¹⁶ Neither Eastern Kern nor Western Nevada meet the minimum population-based applicability thresholds for the enhanced I/M and clean fuel vehicle program requirements.¹⁷ We are proposing not to alter the four-year schedule for submittal of Serious area SIP revisions under the 2015 Ozone SRR. Therefore, following the EPA's final reclassification of Eastern Kern, Sacramento Metro, and Western Nevada to Serious ozone nonattainment, CARB would be required to submit a SIP revision addressing the Serious area elements listed in this section by August 3, 2022 (i.e., four years from the areas' designation as nonattainment).

B. New Source Review and Title V Program Revisions

Typically, when we reclassify an area to a higher ozone classification, the state must amend its new source review (NSR) rules for the area to reflect the lower NSR major source threshold, lower major modification threshold (as applicable), and higher NSR offset ratio corresponding to the higher classification. Under CAA 182(c), the major source threshold for areas reclassified from Moderate to Serious is lowered from 100 tons per year (tpy) to 50 tpy. Under the EPA's NSR regulations, the significant emissions rates that define major modifications for NO_x and VOC in areas reclassified from Moderate to Serious are lowered from 40 tpy to 25 tpy.¹⁸ Under CAA section 182(c)(10), the VOC

¹⁵ CAA section 182(c)(3) and 40 CFR part 51 subpart S.

¹⁶ CAA sections 182(c)(4) and 246(a).

¹⁷ CAA section 182(c)(3)(A) and 246(a), respectively.

¹⁸ 40 CFR 51.165(a)(1)(x).

and NO_x offset ratios for major sources and modifications in a Serious nonattainment area must be at least 1.2 to 1. Reclassification to Serious ozone nonattainment would typically also require changes to the districts' title V operating permits programs necessary to reflect the change in the major source threshold for Serious areas.

The Eastern Kern and Western Nevada ozone nonattainment areas are currently classified as Serious for the 2008 ozone NAAQS and therefore are currently subject to the lower major source and major modification thresholds and higher offset ratios applicable to Serious ozone nonattainment areas. The Sacramento Metro nonattainment area is classified as Severe for the 2008 ozone NAAQS and is therefore subject to the more stringent major source and major modification thresholds and offset ratio applicable to Severe ozone nonattainment areas. For this reason, we anticipate that reclassification to Serious for the 2015 ozone NAAQS will not require the districts to amend their NSR rules to incorporate the requirements for Serious nonattainment areas and that the districts may therefore satisfy the applicable NSR requirements by certifying that their current NSR programs address Serious area requirements.

We are proposing under our general CAA section 301(a) authority to establish a deadline of August 3, 2022, for the State to submit, for each area, revised NSR rules or a certification that the area's current NSR program is sufficient to meet the applicable requirements. We are also proposing under CAA section 301(a) to establish a deadline of August 3, 2022, for each area to submit revised title V program rules reflecting the Serious area major source definition. Given the narrow scope of the required revisions, we anticipate a deadline of August 3, 2022, will allow the districts sufficient time to make the required changes without imposing a lengthy delay in the requirement for

sources newly subject to the title V program to submit a timely application.¹⁹

Additionally, this date is the same as the submittal due date for other Serious area elements and will allow the districts to submit any NSR and title V revisions together with these other elements.

C. Reasonably Available Control Technology

Ozone nonattainment areas classified as Moderate and above are required to implement reasonably available control technology (RACT) for major sources.²⁰ Major sources are defined for Moderate areas as sources that emit or have the potential to emit 100 tpy of VOC or NO_x.²¹ For Serious areas reclassified from Moderate, the requirement for RACT expands to include all sources that emit, or have the potential to emit, 50 tpy of VOC or NO_x.²² Thus, following reclassification from Moderate to Serious, states must revise their RACT SIPs to include those other sources emitting or having the potential to emit between 50 and 100 tpy. Under 40 CFR 51.1312(a)(2)(ii), RACT SIP submittals are due 24 months from the effective date of reclassification or a deadline otherwise established by the EPA in the reclassification action. Under 40 CFR 51.1312(a)(3)(ii), RACT requirements triggered by reclassification should be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or by a deadline otherwise established by the EPA.

¹⁹ A source newly subject to the title V permit program is required to submit a title V application within 12 months after the source becomes subject to the program. See 40 CFR 70.5(a)(1)(i).

²⁰ CAA sections 182(b)(2) and 182(f).

²¹ CAA section 302(j).

²² CAA sections 182(c) and 182(f).

Consistent with 40 CFR 51.1312(a)(2)(ii), we are proposing to establish a deadline of 24 months from the effective date of reclassification to Serious for Eastern Kern, Sacramento Metro, and Western Nevada to submit a Serious area RACT SIP. Consistent with 40 CFR 51.1312(a)(3)(ii), we are proposing a deadline for implementation of Serious area RACT rules as expeditiously as practicable but no later than the start of the attainment year ozone season associated with the affected areas' new attainment date (i.e., January 1, 2027, as proposed)²³ or January 1 of the third year after the affected areas' Serious area RACT SIP submittal deadline,²⁴ whichever is earlier. Eastern Kern, Sacramento Metro, and Western Nevada each remain subject to the Moderate area RACT implementation deadline of January 1, 2023, under 40 CFR 51.1312(a)(3)(i).

D. Transportation Control

CAA section 182(c)(5) requires ozone nonattainment areas that are classified as Serious to submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. The CAA requires the first report to be submitted 6 years after November 15, 1990, which is two years after the deadline for Serious area attainment demonstrations, and every three years thereafter.²⁵ Consistent with this schedule, we are proposing that the first report be submitted 24 months after the attainment demonstrations for these areas are due (i.e.,

²³ Because ozone nonattainment areas in California have a year-round ozone season, the start of the attainment year ozone season associated with each area's new attainment date would be January 1, 2027.

²⁴ If the EPA issues a final reclassification action that is effective in calendar year 2021, January 1 of the third year after the RACT SIP submittal deadline would be January 1, 2026.

²⁵ CAA section 182(c)(2).

August 3, 2024) and every three years thereafter. If a demonstration shows that such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State would be required to develop and submit a SIP revision within 18 months that includes transportation control measures to reduce emissions to levels that are consistent with those projected in the demonstration.²⁶

III. Reclassification of Areas of Indian Country

Because the State of California does not have jurisdiction over Indian country geographically located within the borders of the state, CARB's reclassification requests do not apply to the areas of Indian country within the boundaries of the nonattainment areas identified in 40 CFR 81.305. In these areas of Indian country, the EPA implements federal CAA programs, including reclassifications, consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. There are no tribal lands located within the boundaries of the Eastern Kern and Western Nevada ozone nonattainment areas. The Sacramento Metro ozone nonattainment area includes lands of four federally recognized tribes: the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract); the United Auburn Indian Community of the Auburn Rancheria of California; the Wilton Rancheria; and the Yocha Dehe Wintun Nation.

The EPA contacted tribal officials from each of the federally recognized tribes having jurisdiction over lands within the boundaries of the Sacramento Metro ozone nonattainment area to invite government-to-government consultation on this rulemaking. Under the EPA's Consultation Policy, the EPA consults on a government-to-government basis with federally recognized tribal governments when the EPA's actions and decisions

²⁶ CAA section 182(c)(5).

may affect tribal interests. No tribes requested government-to-government consultation on this action.

We have considered the relevance of our proposal to reclassify the Sacramento Metro area as Serious nonattainment for the 2015 ozone NAAQS for each tribe located within the Sacramento Metro area. We believe that the same facts and circumstances that support the proposal for the non-Indian country lands also support the proposal for reservation areas of Indian country and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the Sacramento Metro area. In this particular case, the State's reclassification request is based on modeling results that show that a longer timeframe is necessary to attain the 2015 ozone NAAQS for the Sacramento Metro area. The longer timeframes will provide the time necessary to realize full implementation of the stationary and mobile source regulations contained in the districts' attainment plans. Additionally, uniformity of classification throughout a nonattainment area is a guiding principle and premise when an area is being reclassified. Ozone and ozone precursors are pervasive pollutants that can be transported throughout a nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both areas with direct sources of pollution as well as nearby areas in the same airshed in which ozone can be transported. Each nonattainment area is assigned an initial classification that applies consistently within the boundaries of the area. The EPA believes this approach best ensures public health protection from the adverse effects of ozone pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to have a different classification for a land area located within the boundaries of a nonattainment area, such as the areas of Indian country in the Sacramento

Metro ozone nonattainment area. Accordingly, based on the EPA's discretionary authority under sections 301(a) and 301(d)(4) of the CAA to implement federal CAA programs in these areas of Indian country, including reclassifications, the EPA is proposing to reclassify areas of Indian country geographically located in the Sacramento Metro area to Serious nonattainment for the 2015 ozone NAAQS.

The Sacramento Metro area and the tribes located within its boundaries are currently designated as Severe, i.e., one classification higher than Serious, for the 1997 and 2008 ozone NAAQS. An area's applicable major source thresholds and offset ratios for NSR and title V programs are based on the area's highest ozone classification. Because these areas of Indian country are already classified as a higher classification for the 1997 and 2008 ozone NAAQS, the major source thresholds and offset ratios for NSR and title V programs applicable to the tribes in the Sacramento Metro area will not change. This reclassification also will not affect projects proposed in these areas of Indian country that require federal permits, approvals, or funding under the EPA's general conformity rule because such projects are already subject to the de minimis thresholds and offset ratios for Severe ozone nonattainment areas. We note that, while eligible tribes may seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

In light of the considerations outlined in this notice that support retention of a uniformly-classified ozone nonattainment area and our proposal to approve the State's voluntary reclassification request, we propose to reclassify the entire Sacramento Metro nonattainment area, including reservation areas of Indian country and any other area of

Indian country located within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, as Serious nonattainment for the 2015 ozone NAAQS. The EPA specifically solicits additional comment on this proposed rule from tribal officials.

IV. Proposed Action and Request for Public Comment

Pursuant to CAA section 181(b)(3), we are proposing to grant CARB's request to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada ozone nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. As described in Section III of this notice, our proposal to reclassify Sacramento Metro to Serious for the 2015 ozone NAAQS includes reservation areas of Indian country and any other area of Indian country located within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction.

As described in Section II of this document, the EPA is proposing a schedule for the State and districts to submit SIP revisions addressing Serious area requirements and to submit revisions to the title V operating permit rules for Eastern Kern, Sacramento Metro, and Western Nevada. Under the EPA's proposed schedule, California would be required to submit SIP revisions addressing Serious area requirements for the affected areas, including an attainment demonstration, reasonable further progress demonstration, reasonably available control measures, contingency measures, motor vehicle I/M program, and clean fuel vehicle program, as applicable, by August 3, 2022. Submittal of any corresponding revisions to NSR and title V program rules that apply in the affected areas would also be due by August 3, 2022. A SIP revision including Serious area RACT rules for the affected areas would be due 24 months from the effective date of the reclassification. Lastly, the EPA is proposing a deadline for implementation of Serious

area RACT rules as expeditiously as practicable but no later than the start of the attainment year ozone season associated with the affected areas' new attainment date or January 1 of the third year after the affected areas' Serious area RACT SIP submittal deadline, whichever is earlier. We will accept comments from the public on this proposed rule for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

V. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this proposed action is not a “significant regulatory action” and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For these reasons, this proposed action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

In addition, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and that this proposed rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications, and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in Executive Order 13175 to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.” Four Indian tribes have areas of Indian country located within the boundaries of the Sacramento Metro ozone nonattainment area, and there are no areas of Indian country located in the Eastern Kern and Western Nevada ozone nonattainment areas. The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country within the boundaries of the Sacramento Metro area, consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has concluded that this proposed rule might have tribal implications for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt Tribal law. As discussed in Section III of this document, this proposed rule does not affect the implementation of NSR or title V programs in these areas of Indian country, nor does it affect projects proposed in these areas of Indian country that require federal permits,

approvals, or funding under the EPA's general conformity rule. None of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

The EPA contacted tribal officials early in the process of developing this proposed rule to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the four tribal governments representing the areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. No tribes requested government-to-government consultation on this action.

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This reclassification action does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898.

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999). This proposed action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This proposed rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation.

As this proposal would set a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: July 13, 2021.

Deborah Jordan,

Acting Regional Administrator,

Region IX.

